

1 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
2 **IN AND FOR THE COUNTY OF APACHE**

3
4 **IN RE THE GENERAL**
5 **ADJUDICATION OF ALL RIGHTS**
6 **TO USE WATER IN THE LITTLE**
7 **COLORADO RIVER SYSTEM AND**
8 **SOURCE**

No. 6417

CONTESTED CASE NO.

ZUNI INDIAN TRIBE WATER
RIGHTS SETTLEMENT
JUDGMENT AND DECREE

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11 The Court has considered the Zuni Indian Tribe Water Rights Settlement Agreement in
12 the Little Colorado River Basin, dated June 7, 2002 ("Settlement Agreement"), permanently
13 resolving certain water rights claims of the Zuni Indian Tribe on behalf of itself and its
14 members (hereinafter referred to as the "Tribe") and of the United States for the benefit of the
15 Tribe and its members that are subject to the Court's jurisdiction in this case, a copy of which
16 Settlement Agreement is attached as Exhibit 1 to the Stipulation and Request for Entry of
17 Judgment and Decree.

18 The Court has also considered the Water Right, Entitlement and Perpetual Delivery
19 Agreement between the Lyman Water Company, the Zuni Indian Tribe and the United States
20 for the benefit of the Tribe, dated February 27, 2006 ("Entitlement and Delivery Agreement"),
21 a copy of which Entitlement and Delivery Agreement is attached as Exhibit 2 to the
22 Stipulation and Request for Entry of Judgment and Decree.

23 The Court finds that the conditions precedent to the enforcement of the Settlement
24 Agreement, set forth in subparagraphs 3.1.A – 3.1.J of the Settlement Agreement, have been
25 satisfied.

26 The Court further finds that, as of the Effective Date of the Settlement Agreement,
27 there is no surface water available for new appropriations in the Norviel Decree Area.

1 NOW THEREFORE, it is hereby adjudged and decreed as follows:

2 1. The terms used in this Judgment and Decree shall be defined as stated in the
3 Settlement Agreement.

4 2. The Settlement Agreement is hereby approved.

5 3. Pursuant to the terms of subparagraph 4.6.B of the Settlement Agreement and
6 the abstract attached to the Settlement Agreement as Exhibit 4.6.B, the Tribe and the United
7 States have the permanent right to the on-Reservation use of a total of 5,500 AFA of surface
8 water from the Little Colorado River. The priority date associated with the right of the Tribe
9 and the United States for the benefit of the Tribe to this surface water is August 28, 1984.

10 4 The Zuni Tribe shall apply to sever and transfer any surface water rights it
11 acquires pursuant to subparagraph 4.6.D (5) of the Settlement Agreement.

12 5. The Entitlement and Delivery Agreement is hereby approved.

13 6. Pursuant to the Entitlement and Delivery Agreement, the Tribe and the United
14 States for the benefit of the Tribe shall hold all right, title and interest to a permanent water
15 right and entitlement to receive, on an annual basis, twelve percent (12%) of LWC Delivered
16 Water as defined in Paragraph 5 of the Entitlement and Delivery Agreement, at the priority
17 date of Lyman Reservoir under the Norviel Decree. Twelve percent (12%) of LWC
18 Delivered Water has historically provided 972 AFA of water. Nothing in the Entitlement and
19 Delivery Agreement restricts, enlarges or otherwise determines the subject matter jurisdiction
20 of any state or federal court.

21 7. Except as described in paragraph 5.3 of the Settlement Agreement, relating to
22 the Zuni Tribe's use of 1,500 AFA of underground water, the Settlement Agreement does not
23 create any vested right to groundwater under state law, or any priority to the use of
24 groundwater that would be superior to any other right or use of groundwater under state law,
25 whether through the Settlement Agreement, by incorporation of any abstract, agreement or
26 stipulation prepared under the Settlement Agreement, or through Congressional legislation
27 approving, confirming or ratifying the Settlement Agreement or any abstract, agreement or

1 stipulation prepared under the Settlement Agreement. Notwithstanding the preceding
2 sentence, the rights of parties to the agreements referred to in paragraph 5.8 of the Settlement
3 Agreement, as among themselves, shall be as stated in those agreements.

4 8. In accordance with the terms of Article 8 of the Settlement Agreement and
5 section 8 (b) of the Act, water rights made available under the Settlement Agreement and used
6 on the Zuni Heaven Reservation shall not be subject to forfeiture or abandonment. State law
7 does not apply to water uses on the Reservation. Furthermore, the State of Arizona may not
8 regulate or tax this water or uses of this water, but this Court or the Norviel Decree Court may
9 assess administrative fees for delivery of this water. Subject to paragraph 7.7 of the
10 Settlement Agreement, the Zuni Indian Tribe and the United States shall use water made
11 available to them under the Settlement Agreement on the Zuni Heaven Reservation for any
12 use they deem appropriate. The Zuni Tribe and the United States shall not, however, sell,
13 lease, transfer, or transport water made available to it for use on the Zuni Heaven Reservation
14 to any other place; provided, however, that water may be severed and transferred from the
15 Reservation to other Zuni Lands, if the severance and transfer is accomplished in accordance
16 with state law. Once transferred to any lands held in fee, that water shall be subject to state
17 law.

18 9. Surface water rights in the Eastern LCR basin shall be determined in accordance
19 with Article 4 of the Settlement Agreement.

20 10. No new applications to appropriate surface water in the Norviel Decree Area
21 shall be filed for uses commenced after the Effective Date of the Settlement Agreement,
22 unless those new surface water uses are located in closed basins.

23 11. No new reservoirs or dams shall be constructed on the LCR between Lyman
24 Dam and the western boundary of the Zuni Heaven Reservation without the written consent of
25 the Tribe unless

26 ...

27 ...

1 A. the new dam or reservoir is used for *de minimis* uses (as defined by the
2 Settlement Agreement), effluent impoundments, tailwater ponds, or impoundments of
3 underground water;

4 B. the reservoir is wholly contained within a closed basin;

5 C. the reservoir has no permanent water storage and is operated solely for
6 flood control purposes; or

7 D. the water stored in the new reservoir results from a change of use, change
8 in point of diversion, or severance and transfer; provided, however, that the Zuni Tribe
9 retains any state-law objections to severance and transfers.

10 12. Zion Dam, formerly known as Udall Reservoir, may be repaired or rebuilt only
11 with the written consent of the Tribe.

12 13. All parties to the Little Colorado River Adjudication and all water users in the
13 Little Colorado River Basin may enforce the provisions of Article 4, Article 5 and Article 11
14 of the Settlement Agreement, according to the terms of those Articles.

15 14. In exchange for the benefits realized under the Settlement Agreement and as
16 authorized by the Act, the Parties have executed Waivers and Releases of Claims for water
17 rights and injuries to water rights, which are attached hereto as Exhibits 1, 2, 3, 4 and 5 and
18 which are by this reference incorporated into this Judgment and Decree. The Judgment and
19 Decree is binding upon all parties to the Little Colorado River Adjudication except to the
20 extent that the express terms of the Settlement Agreement provide that non-signing parties
21 will not be bound by the Settlement Agreement.

22 15. Nothing in this Judgment and Decree, the Settlement Agreement, or the
23 Entitlement and Delivery Agreement quantifies or otherwise affects the water rights or
24 entitlements to water of any Indian tribe, band or community, or the United States for the
25 benefit of any Indian tribe, band or community, other than the Zuni Indian Tribe and the
26 United States for the benefit of the Zuni Tribe.
27

16. This Court retains jurisdiction over this matter for enforcement of this Judgment and Decree, the Settlement Agreement, and the Entitlement and Delivery Agreement including, but not limited to, the entry of injunctions, restraining orders or other remedies under law or equity.

DATED this ____ day of _____, 2006.

Judge of the Superior Court